

# House File 2145 - Introduced

HOUSE FILE 2145  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 534)

## A BILL FOR

1 An Act establishing regulations to permit access to surplus  
2 lines insurance in this state, and providing civil and  
3 criminal penalties, coordinating provisions, and repeals,  
4 and including effective date provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

SURPLUS LINES INSURANCE

Section 1. NEW SECTION. 515I.1 Purpose.

1. The purposes of this chapter are to do all of the following:

- a. Establish a system of regulation which will permit orderly access to surplus lines insurance in this state.
- b. Encourage admitted insurers to make new and innovative types of insurance available to consumers in this state.
- c. Protect persons seeking insurance in this state.
- d. Permit surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers.
- e. Provide a system through which persons may independently procure surplus lines insurance.
- f. Protect revenues of this state.
- g. Foster a national system of regulation of surplus lines insurance by collaborating with other state insurance commissioners.
- h. Provide a system which subjects surplus lines insurance activities in this state to the jurisdiction of the insurance commissioner and state and federal courts in suits by or on behalf of the state.
- i. Ensure compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

2. This division shall be liberally construed to promote these purposes.

Sec. 2. NEW SECTION. 515I.2 Definitions.

As used in this chapter, unless the context otherwise requires:

- 1. "Admitted insurer" means an insurer licensed to do insurance business in this state.
- 2. "Affiliate" means, with respect to an insurer, any entity that controls, is controlled by, or is under common control

1 with the insurer.

2 3. "*Affiliated group*" means any group of entities that are  
3 affiliates.

4 4. "*Commercial insurance*" means insurance for businesses or  
5 professionals.

6 5. "*Commissioner*" means the commissioner of insurance, or  
7 the commissioner's designees.

8 6. "*Control*" means either of the following:

9 a. That an entity directly or indirectly, or acting through  
10 one or more other persons, owns, controls, or has the power  
11 to vote twenty-five percent or more of any class of voting  
12 securities of another entity.

13 b. That an entity controls in any manner the election of a  
14 majority of the directors or trustees of another entity.

15 7. "*Eligible surplus lines insurer*" means either of the  
16 following:

17 a. A nonadmitted insurer that has filed an application with  
18 the commissioner and been approved for placement of surplus  
19 lines insurance and appears on the Iowa listing of nonadmitted  
20 companies.

21 b. A nonadmitted insurer domiciled outside of the United  
22 States that is listed on the quarterly listing of alien  
23 insurers maintained by the national association of insurance  
24 commissioners.

25 8. "*Exempt commercial purchaser*" means any person purchasing  
26 commercial insurance that, at the time of placement, meets all  
27 of the following requirements:

28 a. The person employs or retains a qualified risk manager to  
29 negotiate insurance coverage.

30 b. The person has paid aggregate nationwide commercial  
31 property and casualty insurance premiums in excess of one  
32 hundred thousand dollars in the immediately preceding twelve  
33 months.

34 c. The person meets at least one of the following criteria:

35 (1) The person possesses a net worth in excess of twenty

1 million dollars except that beginning on January 1, 2015, and  
2 on January 1 every five years thereafter, this amount shall be  
3 adjusted to reflect the percentage change in the consumer price  
4 index for all urban consumers for the most recent available  
5 five-year period published by the United States department of  
6 labor, bureau of labor statistics.

7 (2) The person generates annual revenues in excess of fifty  
8 million dollars except that beginning on January 1, 2015, and  
9 on January 1 every five years thereafter, this amount shall be  
10 adjusted to reflect the percentage change in the consumer price  
11 index for all urban consumers for the most recent available  
12 five-year period published by the United States department of  
13 labor, bureau of labor statistics.

14 (3) The person employs more than five hundred full-time or  
15 full-time equivalent employees per individual insured or is a  
16 member of an affiliated group employing more than one thousand  
17 employees in the aggregate.

18 (4) The person is a nonprofit organization or public entity  
19 generating annual budgeted expenditures of at least thirty  
20 million dollars except that beginning on January 1, 2015, and  
21 on January 1 every five years thereafter, this amount shall be  
22 adjusted to reflect the percentage change in the consumer price  
23 index for all urban consumers for the most recent available  
24 five-year period published by the United States department of  
25 labor, bureau of labor statistics.

26 (5) The person is a municipality with a population in excess  
27 of fifty thousand persons.

28 9. *"Home state"* means:

29 a. Except as provided in paragraph "b", with respect to an  
30 insured either of the following:

31 (1) The state in which an insured maintains its principal  
32 place of business or, in the case of an individual, the  
33 individual's principal residence.

34 (2) If one hundred percent of the insured risk is located  
35 out of the state described in subparagraph (1), the state to

1 which the greatest percentage of the insured's taxable premium  
2 for that insurance policy or contract is allocated.

3     **b.** If more than one insured from an affiliated group is a  
4 named insured on a single surplus lines insurance policy or  
5 contract, the home state, as determined pursuant to paragraph  
6 "a", subparagraph (1), of the member of the affiliated group  
7 that has the largest percentage of premium attributed to it  
8 under such insurance policy or contract.

9     10. "*Independently procured insurance*" means insurance  
10 obtained by a person directly from a nonadmitted insurer.

11     11. "*Insurer*" means the same as defined in section 507.1,  
12 subsection 2.

13     12. "*Nonadmitted insurer*" means an insurer not licensed to  
14 do insurance business in this state. "*Nonadmitted insurer*" does  
15 not include a risk retention group as defined in chapter 515E.

16     13. "*Person*" means the same as defined in section 507.1,  
17 subsection 2, or any government or governmental entity.

18     14. "*Placement*" or "*placed*" means that an eligible surplus  
19 lines insurer has accepted a premium and issued an insurance  
20 policy or contract for a particular risk.

21     15. "*Premium tax*" means the tax imposed by the state on  
22 a contract of insurance equal to the applicable percent, as  
23 provided in section 432.1.

24     16. "*Qualified risk manager*" means a person who meets all  
25 of the following requirements:

26     **a.** The person is an employee of, or third party consultant  
27 retained by a commercial insurance policyholder.

28     **b.** The person provides skilled services in loss prevention,  
29 loss reduction, or risk and insurance coverage analysis, and  
30 purchase of insurance.

31     **c.** The person meets one of the following requirements:

32     (1) The person has a bachelor's degree from an accredited  
33 college or university in risk management, business  
34 administration, finance, economics, or any other field  
35 determined by the commissioner to demonstrate minimum

1 competence in risk management; and meets both of the following  
2 requirements:

3 (a) Has three years of experience in risk financing, claims  
4 administration, loss prevention, risk and insurance coverage  
5 analysis, or purchasing commercial lines of insurance.

6 (b) Has one of the following designations:

7 (i) Chartered property and casualty underwriter.

8 (ii) Associate in risk management.

9 (iii) Certified risk manager.

10 (iv) Risk and insurance management society fellow.

11 (v) Any other designation, certification, or license  
12 determined by the commissioner to demonstrate minimum  
13 competency in risk management.

14 (2) The person has at least seven years of experience in  
15 risk financing, claims administration, loss prevention, risk  
16 and insurance coverage analysis, or purchasing commercial lines  
17 of insurance; and has any one of the designations specified in  
18 subparagraph (1), subparagraph division (b).

19 (3) The person has at least ten years of experience in risk  
20 financing, claims administration, loss prevention, risk and  
21 insurance coverage analysis, or purchasing commercial lines of  
22 insurance.

23 (4) The person has a graduate degree from an accredited  
24 college or university in risk management, business  
25 administration, finance, economics, or any other field  
26 determined by the commissioner to demonstrate minimum  
27 competence in risk management.

28 17. "*Surplus lines insurance*" means any property and  
29 casualty insurance in this state on properties, risks, or  
30 exposures, located or to be performed in this state, that is  
31 placed through a surplus lines insurance producer with an  
32 eligible surplus lines insurer. For purposes of this chapter  
33 only, "*surplus lines insurance*" also includes disability  
34 insurance that is in excess of policy limits available from an  
35 admitted insurer.

1     18. *"Surplus lines insurance producer"* means a person  
2 licensed pursuant to chapter 522B to sell, solicit, or  
3 negotiate surplus lines insurance.

4     Sec. 3. NEW SECTION. 515I.3 **Placement of surplus lines**  
5 **insurance business with nonadmitted insurers.**

6     1. Surplus lines insurance may be placed by a surplus lines  
7 insurance producer with a nonadmitted insurer only if all of  
8 the following requirements are met:

9     a. The proposed nonadmitted insurer is an eligible surplus  
10 lines insurer.

11    b. The proposed nonadmitted insurer is authorized to write  
12 the type of insurance sought in this state in its domiciliary  
13 jurisdiction.

14    c. Unless otherwise exempt from this requirement, after a  
15 diligent search the full amount or type of insurance cannot be  
16 obtained from an admitted insurer.

17    d. All other requirements of this chapter are met.

18    2. a. In addition to the full amount of gross premiums  
19 charged by the nonadmitted insurer for the insurance on which a  
20 premium tax is imposed for surplus lines insurance for which  
21 the insured's home state is Iowa, a surplus lines insurance  
22 producer shall collect and pay to the state of Iowa the  
23 appropriate amount of premium tax as provided in section 432.1  
24 for surplus lines insurance. The commissioner shall adopt  
25 rules to specify the use of credits or deductions that may be  
26 applied to the premium tax.

27    b. The tax on any portion of the premium unearned at the  
28 termination of the surplus lines insurance that has been  
29 credited by the state shall be returned to the policyholder  
30 directly by the surplus lines insurance producer. The surplus  
31 lines insurance producer is prohibited from rebating, for any  
32 reason, any part of the tax.

33    3. This section shall not apply to a person properly  
34 licensed as an insurance producer, who, for a fee and pursuant  
35 to a written agreement, is engaged solely to offer advice,

1 counsel, opinion, or service to an insured with respect to  
2 the benefits, advantages, or disadvantages promised under  
3 any proposed or in-force policy of insurance if the person  
4 does not, directly or indirectly, participate in the sale,  
5 solicitation, or negotiation of insurance on behalf of the  
6 insured.

7 4. Insurance placed under this section shall be valid and  
8 enforceable as to all parties.

9 Sec. 4. NEW SECTION. 515I.4 Requirements for eligible  
10 surplus lines insurers.

11 1. When this state is the home state of the insured, a  
12 nonadmitted insurer shall not place any surplus lines insurance  
13 business in this state unless the insurer has been approved  
14 for such activity by the commissioner. A nonadmitted insurer  
15 seeking to qualify as an eligible surplus lines insurer shall  
16 submit a request to so qualify in a form and format as directed  
17 by the commissioner which demonstrates all of the following:

18 a. Capital and surplus or its equivalent under the laws of  
19 the insurer's domiciliary jurisdiction which equals the greater  
20 of either of the following:

21 (1) The minimum capital and surplus requirements under the  
22 laws of this state.

23 (2) Fifteen million dollars.

24 b. Evidence that the nonadmitted insurer is in good standing  
25 with its domiciliary regulator.

26 2. The commissioner may waive the requirements of this  
27 section or set specific requirements on a case-by-case  
28 basis upon an affirmative finding of acceptability by  
29 the commissioner that the placement of insurance with the  
30 nonadmitted insurer is necessary and will not be detrimental  
31 to the public and to policyholders. In determining whether  
32 business may be placed with a nonadmitted insurer, the  
33 commissioner shall consider all of the following:

34 a. The interests of the public and policyholders.

35 b. The length of time the insurer has been licensed to



1 do insurance business in its domiciliary jurisdiction and  
2 elsewhere.

3     *c.* The unavailability of particular coverages from other  
4 admitted insurers or eligible surplus lines insurers in this  
5 state.

6     *d.* The size of the nonadmitted insurer as measured by  
7 the insurer's assets, capital and surplus, reserves, premium  
8 writings, insurance in force, or other appropriate criteria.

9     *e.* The kinds of business the nonadmitted insurer writes, the  
10 insurer's net exposure, and the extent to which the insurer's  
11 business is diversified among several lines of insurance and  
12 geographic locations.

13     *f.* The past and projected trend in the size of the  
14 nonadmitted insurer's capital and surplus considering such  
15 factors as premium growth, operating history, loss and expense  
16 ratios, or other appropriate criteria.

17     3. Eligible surplus lines insurers shall not be required to  
18 file or seek approval of their forms and rates.

19     Sec. 5. NEW SECTION. 515I.5 **Duties of surplus lines**  
20 **insurance producers.**

21     1. A surplus lines insurance producer shall not issue  
22 or deliver any evidence of insurance or purport to insure  
23 or represent that insurance will be or has been written by  
24 an eligible surplus lines insurer, unless the producer has  
25 authority from the insurer to bind the risk to be insured, or  
26 has received information from the insurer in the regular course  
27 of business that the coverage has been granted.

28     2. Upon placement of surplus lines insurance, the surplus  
29 lines insurance producer shall promptly deliver to the insured  
30 the policy or contract, or if the policy or contract is not  
31 then available, a certificate cover note, binder, or other  
32 evidence of insurance. The certificate cover note, binder,  
33 or other evidence of insurance shall contain information as  
34 specified by the commissioner by rule.

35     3. As soon as is reasonably possible after the placement

1 of the insurance, the surplus lines insurance producer shall  
2 deliver a copy of the policy or contract or, if not available,  
3 a certificate of insurance to the insured to replace any  
4 evidence of insurance previously issued. Each policy or  
5 contract or certificate of insurance shall contain or have  
6 attached a complete record of all policy or contract insuring  
7 agreements, conditions, exclusions, clauses, endorsements, or  
8 any other material facts that would regularly be included in  
9 the policy or contract.

10 4. If, after delivery of any evidence of insurance, there  
11 is any change in the identity of the eligible surplus lines  
12 insurer, or the proportion of the risk assumed by such insurer,  
13 or any other material change in coverage as stated in the  
14 original evidence of insurance, or in any other material change  
15 as to the insurance coverage so evidenced, the surplus lines  
16 insurance producer shall promptly issue and deliver to the  
17 insured an appropriate substitute for, or endorsement of the  
18 original document, accurately showing the current status of  
19 the coverage and the surplus lines insurer responsible for the  
20 coverage.

21 5. Each surplus lines insurance producer shall keep a  
22 full and true record of each surplus lines insurance policy  
23 or contract placed by an eligible surplus lines insurer and  
24 issued or delivered by that person which covers risks wholly  
25 or partly located or to be performed in this state. These  
26 records and any other records deemed reasonably necessary by  
27 the commissioner shall be made available to the commissioner  
28 for examination upon request. Records shall be maintained for  
29 a period of not less than five years following termination of  
30 the surplus lines insurance policy or contract.

31 6. A surplus lines insurance producer shall file a report  
32 and remit all premium taxes due to this state for all surplus  
33 lines insurance placed by an eligible surplus lines insurer and  
34 issued or delivered by that person during the reporting period  
35 established by the commissioner. The specific requirements

1 for the timing of and content of the report and the manner of  
2 filing shall be specified by the commissioner by rule.

3     Sec. 6. NEW SECTION.   **515I.6 Actions against eligible**  
4 **surplus lines insurers.**

5     An eligible surplus lines insurer may be sued upon a cause of  
6 action arising in this state under a surplus lines insurance  
7 policy or contract placed by the insurer or upon evidence of  
8 insurance placed by the insurer and issued or delivered in  
9 this state by a surplus lines insurance producer. A policy  
10 or contract issued by an eligible surplus lines insurer shall  
11 contain a provision stating the substance of this section and  
12 designating the person upon whom service of process can be made  
13 on behalf of the insurer.

14     Sec. 7. NEW SECTION.   **515I.7 Effect of payment to surplus**  
15 **lines insurance producer.**

16     A payment of premium to a surplus lines insurance producer  
17 acting for a person other than the producer in procuring,  
18 continuing, or renewing any policy or contract of surplus lines  
19 insurance procured under this chapter shall be deemed to be  
20 payment to the eligible surplus lines insurer, notwithstanding  
21 any other conditions or stipulations that are inserted in the  
22 policy or contract of insurance.

23     Sec. 8. NEW SECTION.   **515I.8 Referrals to surplus lines**  
24 **insurance producers.**

25     A surplus lines insurance producer may accept referrals  
26 to place surplus lines insurance from any other licensed  
27 insurance producer and the surplus lines insurance producer may  
28 compensate the referring insurance producer for the referral.

29     Sec. 9. NEW SECTION.   **515I.9 Exempt commercial purchasers.**

30     A surplus lines insurance producer seeking to procure or  
31 place surplus lines insurance in this state for an exempt  
32 commercial purchaser is not required to make a diligent search  
33 to determine whether the full amount or type of insurance  
34 sought by such exempt commercial purchaser can be obtained from  
35 an admitted insurer if both of the following requirements are

1 met:

2 1. The surplus lines insurance producer has disclosed  
3 to the exempt commercial purchaser that such insurance may  
4 be available from an admitted insurer that may provide the  
5 purchaser with greater protection and with more regulatory  
6 oversight.

7 2. The exempt commercial purchaser has subsequently  
8 requested in writing that the surplus lines insurance producer  
9 place such insurance with an eligible surplus lines insurer.

10 Sec. 10. NEW SECTION. 515I.10 **Independently procured**  
11 **surplus lines insurance — premium tax — penalty.**

12 1. When this state is the home state of the insured, a  
13 person who directly procures, continues, or renews a surplus  
14 lines insurance policy or contract independently and without  
15 using a surplus lines insurance producer on properties,  
16 risks, or exposures located or to be performed in whole or in  
17 part in this state shall file a written report regarding the  
18 transaction with the commissioner, in a manner and method as  
19 directed by the commissioner by rule.

20 2. When this state is the home state of the insured,  
21 each person who has independently procured a surplus lines  
22 insurance policy or contract shall pay a premium tax at a  
23 rate appropriate to the amount of premium tax equal to the  
24 applicable percent, as provided in section 432.1. The tax  
25 shall be remitted via a method and schedule and in a manner as  
26 directed by the commissioner by rule.

27 3. The commissioner may assess a penalty of one percent of  
28 the delinquent amount of taxes owed per month as specified in  
29 section 507A.9.

30 Sec. 11. NEW SECTION. 515I.11 **Violations and penalties.**

31 1. The commissioner may, after notice and a hearing, declare  
32 a surplus lines insurer ineligible to place surplus lines  
33 insurance in the state if at any time the commissioner has  
34 reason to believe that a surplus lines insurer meets any of the  
35 following conditions:

1     *a.* Is in unsound financial condition or has acted in an  
2 untrustworthy manner.

3     *b.* No longer meets the standards set forth in this chapter.

4     *c.* Has willfully violated the laws of this state.

5     *d.* Does not conduct its claims settlement practices in a  
6 fair and reasonable manner.

7     *e.* Has committed an unfair or deceptive insurance trade  
8 practice under chapter 507B.

9     2. The commissioner may suspend, revoke, or refuse to renew  
10 the license of a surplus lines insurance producer or impose any  
11 sanction or penalty allowed under chapter 507B after notice and  
12 hearing for one or more of the following grounds:

13     *a.* Removal of the resident surplus lines insurance  
14 producer's principal place of business from this state without  
15 notice to the commissioner.

16     *b.* Removal of the resident surplus lines insurance  
17 producer's office accounts and records from this state during  
18 the period for which the accounts and records are required to  
19 be maintained.

20     *c.* Closure of the surplus lines insurance producer's  
21 office for a period of more than thirty business days, unless  
22 permission is granted by the commissioner.

23     *d.* Failure to file required reports with the commissioner  
24 or the commissioner's designee.

25     *e.* Failure to remit surplus lines insurance premium taxes to  
26 this state as directed by the commissioner.

27     *f.* Violating any provision of this chapter.

28     *g.* For any cause for which an insurance producer license  
29 could be denied, revoked, or suspended, or renewal refused or a  
30 civil penalty imposed under chapter 522B.

31     3. The commissioner may initiate an administrative  
32 proceeding against a surplus lines insurance producer for the  
33 collection of unpaid premium taxes. The commissioner may  
34 assess a penalty of one percent of the delinquent amount of  
35 taxes owed per month as specified in section 507A.9 and any

1 other penalties allowed by law.

2 4. A person that represents or aids a nonadmitted insurer  
3 in violation of this chapter shall be subject to criminal  
4 penalties as set forth in section 507A.10.

5 Sec. 12. NEW SECTION. 515I.12 Cease and desist orders —  
6 civil and criminal penalties.

7 1. Upon a determination by the commissioner, after a  
8 hearing conducted pursuant to chapter 17A, that a surplus lines  
9 insurance producer, an eligible surplus lines insurer, or a  
10 nonadmitted insurer has violated a provision of this chapter,  
11 the commissioner shall reduce the findings of the hearing to  
12 writing and deliver a copy of the findings to the producer  
13 or insurer. The commissioner may issue an order requiring  
14 the producer or insurer to cease and desist from engaging in  
15 the conduct resulting in the violation and may assess a civil  
16 penalty of not more than fifty thousand dollars against the  
17 producer or insurer.

18 2. a. Upon a determination by the commissioner that a  
19 surplus lines insurance producer, an eligible surplus lines  
20 insurer, or a nonadmitted insurer has engaged, is engaging,  
21 or is about to engage in any act or practice constituting a  
22 violation of this chapter or a rule adopted or order issued  
23 under this chapter, the commissioner may issue a summary order,  
24 including a brief statement of findings of fact, conclusions  
25 of law, and policy reasons for the decision, and directing the  
26 producer or insurer to cease and desist from engaging in the  
27 act or practice or to take other affirmative action as is in  
28 the judgment of the commissioner necessary to comply with the  
29 requirements of this chapter.

30 b. A surplus lines insurance producer, an eligible surplus  
31 lines insurer, or a nonadmitted insurer to whom a summary order  
32 has been issued under this subsection may contest the order by  
33 filing a request for a contested case proceeding and hearing as  
34 provided in chapter 17A and in accordance with rules adopted by  
35 the commissioner. However, the producer or insurer shall have

1 at least thirty days from the date that the order is issued in  
2 order to file the request. Section 17A.18A is inapplicable to  
3 a summary order issued under this subsection. If a hearing  
4 is not timely requested, the summary order becomes final by  
5 operation of law. The order shall remain effective from the  
6 date of issuance until the date the order becomes final by  
7 operation of law or is overturned by a presiding officer or  
8 court following a request for hearing.

9 c. A surplus lines insurance producer, an eligible surplus  
10 lines insurer, or a nonadmitted insurer violating a summary  
11 order issued under this subsection shall be deemed in contempt  
12 of that order. The commissioner may petition the district  
13 court to enforce the order as certified by the commissioner.  
14 The district court shall find the producer or insurer in  
15 contempt of the order if the court finds after hearing that  
16 the producer or insurer is not in compliance with the order.  
17 The court may assess a civil penalty against the producer or  
18 insurer and may issue further orders as it deems appropriate.

19 3. A person acting as a surplus lines insurance producer,  
20 an eligible surplus lines insurer, or nonadmitted insurer who  
21 willfully violates any provision of this chapter, or any rule  
22 adopted or order issued under this chapter, is guilty of a  
23 class "D" felony.

24 4. A person acting as a surplus lines insurance producer,  
25 an eligible surplus lines insurer, or nonadmitted insurer who  
26 willfully violates any provision of this chapter, or any rule  
27 adopted or order issued under this chapter, when such violation  
28 results in a loss of more than ten thousand dollars, is guilty  
29 of a class "C" felony.

30 5. The commissioner may refer such evidence as is available  
31 concerning violations of this chapter or of any rule adopted  
32 or order issued under this chapter, or of the failure of a  
33 person to comply with the licensing requirements of chapter  
34 522B, to the attorney general or the proper county attorney who  
35 may, with or without such reference, institute the appropriate

1 criminal proceedings under this chapter.

2     6. This chapter does not limit the power of the state to  
3 punish any person for any conduct that constitutes a crime  
4 under any other statute.

5     Sec. 13. NEW SECTION.   515I.13   **Insurance policy or contract**  
6 **remains valid.**

7     A policy or contract of insurance issued or delivered by an  
8 eligible surplus lines insurer or a nonadmitted insurer which  
9 is otherwise valid and contains a condition or provision not  
10 in compliance with the requirements of this chapter is not  
11 thereby rendered invalid but shall be construed and applied in  
12 accordance with the conditions and provisions which would have  
13 applied had the policy or contract been issued or delivered in  
14 full compliance with this chapter.

15     Sec. 14. NEW SECTION.   515I.13A   **Scope of operation.**

16     This chapter applies only to transactions when this state is  
17 the home state of the applicant or the insured.

18     Sec. 15. NEW SECTION.   515I.14   **Severability.**

19     If any provision of this chapter, or the application of the  
20 provision of this chapter to any person or circumstance, is  
21 held invalid, the remainder of the chapter and the application  
22 of the provision to persons or circumstances other than those  
23 as to which it is held invalid, shall not be affected by that  
24 holding.

25     Sec. 16. NEW SECTION.   515I.15   **Rulemaking authority.**

26     The commissioner shall adopt rules pursuant to chapter 17A  
27 to implement the purposes of this chapter.

28                                   DIVISION II

29                                   COORDINATING PROVISIONS

30     Sec. 17. Section 432.1, subsection 3, Code 2011, is amended  
31 to read as follows:

32     3. The applicable percent, as provided in subsection 4, of  
33 the gross amount of premiums written, and assessments and fees  
34 received during the preceding calendar year by every company  
35 or association other than life on contracts of insurance other



1 than life for business done in this state, including all  
2 insurance upon property situated in this state except surplus  
3 lines insurance, after deducting the amounts returned upon  
4 canceled policies, certificates, and rejected applications  
5 but not including the gross premiums written, and assessments  
6 and fees received in connection with ocean marine insurance  
7 authorized in section 515.48. For surplus lines insurance,  
8 the applicable percent, as provided in subsection 4, shall be  
9 calculated on the amount of premiums written on surplus lines  
10 insurance policies where the home state of the insured, as  
11 defined in chapter 515I, is Iowa.

12 Sec. 18. Section 507A.4, subsection 1, Code Supplement  
13 2011, is amended to read as follows:

14 1. The lawful transaction of surplus lines insurance as  
15 permitted by ~~sections 515.120 through 515.122~~ chapter 515I.

16 Sec. 19. Section 515E.9, Code 2011, is amended to read as  
17 follows:

18 **515E.9 Purchasing group restrictions.**

19 A purchasing group shall not purchase insurance from an  
20 insurer not admitted in this state unless the purchase is  
21 effected through a duly licensed ~~agent or broker~~ insurance  
22 producer acting pursuant to ~~sections 515.120 through 515.122~~  
23 chapter 515I.

24 Sec. 20. Section 522B.6, subsection 2, paragraph g, Code  
25 2011, is amended to read as follows:

26 g. Excess and surplus lines insurance provided by certain  
27 nonadmitted insurers pursuant to ~~section 515.120~~ chapter 515I.

28 Sec. 21. REPEAL. Sections 515.120 through 515.122, Code and  
29 Code Supplement 2011, are repealed.

30 Sec. 22. EFFECTIVE UPON ENACTMENT. This Act, being deemed  
31 of immediate importance, takes effect upon enactment.

32 EXPLANATION

33 This bill establishes new regulations to permit increased  
34 access to surplus lines insurance in the state, and contains  
35 penalties, coordinating provisions, repeals, and effective date

1 provisions.

2 The bill creates new Code chapter 515I which contains  
3 regulations that permit the sale of surplus lines insurance  
4 in the state by insurers who are not licensed to do insurance  
5 business in the state. Such insurers shall be listed as  
6 eligible surplus lines insurers if they meet the requirements  
7 of the Code chapter and are approved to sell such insurance by  
8 the commissioner of insurance.

9 Surplus lines insurance producers that are licensed pursuant  
10 to Code chapter 522B to sell, solicit, or negotiate surplus  
11 lines insurance are also subject to new regulations and must  
12 file reports and remit premium taxes to the state for all  
13 surplus lines insurance sold or delivered by the producer, as  
14 required by the commissioner by rule. A payment of premium to  
15 a producer is deemed to be payment to the insurer.

16 Surplus lines insurance producers may sell insurance issued  
17 by an insurer that is not admitted to do business in this  
18 state if the insurer is an eligible surplus lines insurer, the  
19 insurer is authorized to write the type of insurance being sold  
20 in its domiciliary jurisdiction, and a diligent search by the  
21 producer indicates that the type of insurance being sold cannot  
22 be obtained from an insurer admitted to do insurance business  
23 in this state. Surplus lines insurance producers may sell  
24 commercial surplus lines insurance, without determining whether  
25 the coverage is available from an insurer admitted to do  
26 business in the state, to certain exempt commercial purchasers  
27 that employ qualified risk managers to negotiate the coverage  
28 and meet certain financial and size parameters.

29 When this state is the home state of the insured, a person  
30 who procures surplus lines insurance independently without  
31 using the services of a surplus lines insurance producer is  
32 required to file a written report about the transaction and  
33 pay the appropriate premium taxes that are due in the manner  
34 that is required by the commissioner by rule. Delinquent taxes  
35 shall be increased by a penalty of 1 percent per month of the

1 delinquent amount.

2     The commissioner may, after notice and a hearing, declare  
3 a nonadmitted insurer ineligible to place surplus lines  
4 insurance in the state if the commissioner believes that the  
5 insurer is in an unsound financial condition or has acted in an  
6 untrustworthy manner; no longer meets the requirements of Code  
7 chapter 515I; has willfully violated Iowa law; does not conduct  
8 its claims settlement practices in a fair and reasonable  
9 manner; or has committed an unfair or deceptive trade practice  
10 under Code chapter 507B.

11     The commissioner may also suspend, revoke, or refuse to  
12 renew the license of a surplus lines insurance producer or  
13 impose any penalty under Code chapter 507B for specified  
14 reasons. The commissioner may initiate an administrative  
15 proceeding against a surplus lines insurance producer for  
16 the collection of unpaid premium taxes and assess a penalty  
17 of 1 percent per month of the delinquent amount. A person  
18 who represents or aids a nonadmitted insurer in violation of  
19 the new Code chapter is subject to criminal penalties. Upon  
20 a determination by the commissioner that a surplus lines  
21 producer, an eligible surplus lines insurance insurer, or  
22 a nonadmitted insurer is violating or about to violate the  
23 provisions of Code chapter 515I, the commissioner may issue a  
24 summary order directing the producer or insurer to cease and  
25 desist, and may impose civil penalties.

26     Willful violation of the provisions of the Code chapter by  
27 a surplus lines insurance producer, an eligible surplus lines  
28 insurer, or a nonadmitted insurer is punishable as a class "D"  
29 felony. A class "D" felony is punishable by confinement for  
30 no more than five years and a fine of at least \$750 but not  
31 more than \$7,500. Such a willful violation that results in a  
32 loss of more than \$10,000 is punishable as a class "C" felony.  
33 A class "C" felony is punishable by confinement for no more  
34 than 10 years and a fine of at least \$1,000 but not more than  
35 \$10,000.

1 A policy or contract issued by an eligible surplus lines  
2 insurer or a nonadmitted insurer which is otherwise valid  
3 and contains a condition or provision not in compliance with  
4 the requirements of Code chapter 515I shall be construed in  
5 accordance with the conditions and provisions which would have  
6 applied if the policy or contract had been issued or delivered  
7 in compliance with the Code chapter. Code chapter 515I applies  
8 only to transactions when this state is the home state of  
9 the applicant or the insured. Also, if a provision of the  
10 chapter is held invalid as to a person or circumstance, the  
11 rest of the Code chapter shall be valid as to other persons or  
12 circumstances.

13 The commissioner shall adopt rules pursuant to Code chapter  
14 17A to implement the purposes of the new Code chapter.

15 The bill repeals several provisions currently contained in  
16 Code chapter 515 which relate to the sale of surplus lines  
17 insurance in the state. Code sections 507A.4(1) and 515E.9 are  
18 amended to reflect this repeal and the enactment of new Code  
19 chapter 515I.

20 Code section 432.1 is amended to provide that for surplus  
21 lines insurance, the tax on premiums are calculated on the  
22 amount of premiums written on such insurance policies where the  
23 home state of the insured is Iowa.

24 The bill is effective upon enactment.